

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Goerlitzer, et al

Examiner: Anderson, Rebecca L.

Art Unit: 1626

Application No.: 10/789,019

Filed: February 27, 2004

Title: **Diarylecyloalkyl derivatives, process for
their preparation and their use as
pharmaceuticals**

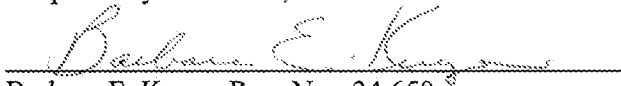
RESPONSE AFTER FINAL REJECTION AND DECLARATION UNDER 37 CFR §1.116(e)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This paper is in response to the Advisory Action mailed 31 July 2006, wherein the Examiner stated that the Reply filed 12 July 2006 failed to place the application in condition for allowance because said Reply did not also provide an affidavit why the submission contained therein [i.e. the Statement required under 37 CFR §1.55(a)(4)(i)-(ii)] was necessary and was not earlier presented. Applicant herewith submits the affidavit required under 37 CFR §1.116(e) and respectfully requests that the Examiner enter both this affidavit and the Statement submitted with the Reply of 12 July 2006.

The Continuation Sheet attached to the Advisory Action contains a further assertion by the Examiner that the translation of the foreign priority document and the statement that the translation of the certified copy is accurate were not entered because "it would create new issues (35 USC 112, first paragraph issues of method claims) that are necessitated by applicant's submission (that would make the product allowable and necessitate rejoinder of the methods) and applicant's request for rejoinder, see the applicant's remarks, page 9, filed 8/22/2005, wherein applicant requests rejoinder". The Examiner went on to say that the submission raises new issues because the method claims, if rejoined, would raise 35 USC §112 1st paragraph issues. In order to advance the prosecution of this application, Applicant hereby withdraws the request for rejoinder. Applicant believes that the application is now in condition for allowance.

Respectfully submitted,


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